

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1030 of 1999

in

SPECIAL CIVIL APPLICATION No 5151 of 1999

with

CIVIL APPLICATION NO. 7580 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MINGALPUR GROUP SEVA SAHKARI MANDALI LTD.

Versus

SANJAYBHAI BHAVSAR RETURNING OFFICER

Appearance:

MR N.D.NANAVATI WITH HARIN P RAVAL for Appellant
Mr K.G.VAKHARIA WITH AVNI MEHTA FOR RESPONDENT NO.4
MR S.N.SHELAT, ADDL.ADVOCATE GENERAL FOR STATE
AUTHORITIES.

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: /12/1999

CAV JUDGEMENT

Per Thakker, Actg.C.J.:

This appeal is filed against summary dismissal of SCA No. 5151 of 1999 by the learned Single Judge on July 24,1999.

Appellant was the original petitioner.It filed the above petition for an appropriate writ, direction or order quashing and setting aside the decision of respondent No.1 -returning officer, deleting and removing the name of the petitioner society and its authorised delegate from the final list of voters of Dhandhuka Taluka constituency of Multi Purpose Agriculture and Seva Sahkari Mandali of Ahmedabad Dist.Coop.Bank Limited.

The case of the petitioner before the learned Single Judge was that it was a cooperative society registered under the Gujarat Cooperative Societies Act,1961 (hereinafter referred to as 'the Act').According to the petitioner, final list of voters was published on the notice board of the Bank. Copies thereof were also sent to the District Registrar and District Collector. The petitioner society thereafter called a meeting on December 21,1998 and vide resolution No. 2, Vikramsingh Chudasama was nominated as its authorised delegate to take part in the election of Managing Committee/ Board of Directors of the Bank. Accordigly, his name was communicated to the Bank as its authorised delegate. On July 14,1999, however, the first respondent did not include the name of the delegate of the petitioner society in the final list of voters on the grounds that the delegate was neither resident of village Mingalpur nor did he hold any agricultural land in the said village as he was Ubhaad Member.He,therefore,deleted the name of Vikramsinh Chudasama . The said action was challenged by the petitioner by filing the above petition.

When the matter was placed before the learned Single Judge, a preliminary objection was raised on behalf of the authorities as also on behalf of respondent No.4 that the petition filed by the petitioner was not maintainable and the petitioner had to file an election petition after the election would be over. So far as respondent No.4 was concerned, it was also submitted that no relief was sought against him and he was wrongly joined as party-respondent.

Learned Single Judge, after hearing the parties, held that having regard to the facts and circumstances of the

case, he would not be justified in exercising extraordinary powers under Article 226 of the Constitution of India interfering with the decision of the returning officer placing a particular society in one category and not in the other category. In the opinion of the learned Single Judge, in view of rival contentions of the parties, it could not be said that the case was of an exceptional nature which would warrant grant of relief under Article 226 of the Constitution. According to the learned Single Judge, the contention of the respondents was well founded that after election would be over, it would be open to the petitioner to approach election tribunal by filing an election petition.

We have heard Mr. N.D.Nanavati, senior advocate with Mr. Harin Raval for the appellant, Mr. S.N.Shelat, Additional Advocate General for the authorities and Mr. K.G,Vakharia , senior advocate with Avni Mehta for the contesting respondents.

Mr. Nanavati strenuously contended that when respondent No.4 had no locus standi to raise an objection , at his instance, objection could not have been entertained and no order could have been passed by the first respondent. He submitted that locus standi goes to the root of the matter and once it is established that respondent No.4 could not be said to be an "aggrieved party" nor he could move the first respondent against placing the petitioner society under a particular head or could have raised an objection against the delgate nominated by the society, the order passed or action taken pursuant to such objection could not be said to be in accordance with law. He, therefore, submitted that the order deserves to be quashed and set aside .

He also submitted that there is error apparent on the face of record committed by the first respondent in not considering an important and material fact in its proper perspective that the petitioner was registered under the head "Agriculture and Multi Purpose Society" and it was a primary society. No circumstances were changed thereafter. In these circumstances, it was not open to respondent No.1 to change the status of the petitioner society and the order deserves to be quashed and set aside.

He also argued that the learned Single Judger ought to have considered the above facts and ought to have exercised powers under Article 226. By not doing so, a jurisdictional error has been committed by him which requires to be corrected by this Court.

Mr. Nanavati further submitted that what was required to be seen by the first respondent was to read the provisions of the Act. Once a society is registered in accordance with the provisions of the Act and placed under a particular category, it was not open to the Returning Officer to change the category as the said power is conferred by the Act only on the Registrar and it could not have been exercised by the Returning Officer or Deputy Collector. He, therefore, submitted that LPA deserves to be admitted and interim relief deserves to be granted.

Mr Shelat and Mr. Vakharia, for the respondents on the other hand, supported the order passed by the learned Single Judge.

In the facts and circumstances of the case, in our opinion, it cannot be said that by dismissing the petition on the ground that this was not a fit case to exercise extraordinary powers and that it was open to the petitioner to approach election tribunal after the election would be over, the learned Single Judge has committed any error of law and/or of jurisdiction.

In our opinion, the learned Single Judge was also right in observing that the question raised by the petitioner was not a pure question of law unconnected with facts. May be that the action taken by the first respondent may not be finally upheld by the appropriate authority under the Act. At the same time, however, it cannot be said that the first respondent had no power, authority or jurisdiction to take such decision. In the instant case, the question was as to under which category, the petitioner society could be placed. In our opinion, the decision of that question was within power, authority and jurisdiction of respondent no.1 to decide the same and accordingly, it was decided. Legality or validity of such decision cannot be challenged under Article 226 of the Constitution and that too, at this stage. Hence, by not interfering with the said order, learned Single Judge has not committed any error of law and/or or jurisdiction.

For the foregoing reasons, LPA deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to cost. No order on civil application.

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